

Bullock, Kepple, Litten, Neff, O'Malley, Rader,  
Shachner

RESOLUTION NO. 2021-36

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least two thirds of the members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor and/or her designee to enter into an Agreement with Little Jemmy LLC for a Community Development Block Grant (CDBG) Economic Development Fund (EDF) Loan for a total amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000), forgivable over five (5) years at \$30,000 per annum upon satisfaction of all terms of said Agreement, for the substantial rehabilitation of the former Bi-Rite Building located at 12501 Madison Avenue, Lakewood, Ohio 44107 and the structure's adaptive reuse as retail and office space.

WHEREAS, as an authorized use of the City of Lakewood's entitlement allocation of federal CDBG dollars, the EDF was established and approved by Lakewood City Council on December 2, 1996 to promote business investment and redevelopment in Lakewood for the purpose of creating jobs, generating new tax revenue, providing for physical improvements, and enhancing the City's regional competitiveness and attractiveness as a location for new businesses and the expansion of existing businesses, and;

WHEREAS, 12501 Madison Avenue, acquired for \$750,000 by Little Jemmy LLC in October 2019, has been vacant and abandoned for several years and is obsolete in its current, dilapidated condition, and;

WHEREAS, while structurally sound, the building requires substantial rehabilitation, including correction of code violations, to achieve its highest, best, and most productive use, and;

WHEREAS, Little Jemmy LLC has requested financial assistance for the substantial rehabilitation of the entire structure including asbestos remediation; correction of code violations; roof replacement; installation of a fire suppression system; a new elevator and staircase; and other significant improvements which represent a total permanent investment of more than \$4,000,000, and;

WHEREAS, substantial state and federal Historic Preservation Tax Credits secured by Little Jemmy LLC to support the project require adherence to the Secretary of the Interior's Standards for the Treatment of Historic Properties which promote best practices that protect the community's irreplaceable cultural resources, and;

WHEREAS, this transformational real estate development project will fully rehabilitate and adaptively re-use a significant, historic, long-vacant property to its highest and best use; generate significant income and property tax revenue; and both complement and fortify the significant ongoing investment of public and private resources in the revitalization of the Birdtown Historic District.

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the city of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of municipal departments in order to receive and make these funds available as soon as possible; now, therefore,


BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

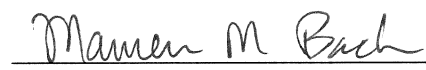
Section 1. The Mayor of Lakewood, or her designee, is hereby authorized to enter into an agreement with Little Jemmy LLC for an economic development grant in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00) toward permanent improvements to the facility located at 12501 Madison Avenue, Lakewood, Ohio 44107 (PPNs 315-23-157, 315-23-120, 315-23-028, and 315-23-029 ); said agreement to contain such terms and conditions deemed necessary by the Director of Law to protect the public interest and in substantially the same form as attached as " Exhibit A."

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

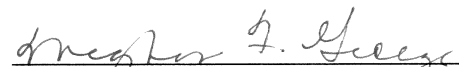
Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted 9/7/2021

  
Daniel J. O'Malley, President of Council

  
Maureen M. Bach, Clerk of Council

Approved 9/8/21

  
Meghan F. George, Mayor

**Community Development Block Grant  
Economic Development Fund Loan Agreement**

**Between**

**The City of Lakewood  
&  
Little Jemmy, LLC**

This Loan Agreement (Agreement) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021 (Effective Date) by and between the **City of Lakewood (City or Lender)**, an Ohio municipal corporation, and **Little Jemmy, LLC (Borrower)**, an Ohio Limited Liability Company located at 13369 Madison Avenue, Lakewood, Ohio 44107 duly organized and validly existing under the laws of the State of Ohio, by and through its duly authorized representative.

**Recitals**

WHEREAS, the Borrower has applied for a City of Lakewood Community Development Block Grant (CDBG) Economic Development Fund Loan (Loan) to assist with the re-development of 12501 Madison Avenue (Project Site);

WHEREAS, the City has determined the project to be funded by the Loan meets the objectives and requirements of Lakewood's federal Community Development Block Grant Economic Development Fund;

WHEREAS, the City has determined the Loan project, as defined in Section 1.01 of this Agreement, is in the public interest and that the Borrower's implementation of the funded Project will accomplish some or all of the following: alleviate physical and economic deterioration, eliminate and/or prevent the recurrence of slum and blight, stimulate economic revitalization, improve the City's tax base, and create and/or retain jobs and employment in the community;

WHEREAS, the City desires to make the Loan to Borrower so that Borrower can carry out its plans, subject to the terms and conditions of this Agreement as set forth herein;

WHEREAS, Lakewood City Council adopted Resolution XXXX-XX, attached hereto as **Exhibit A** and made a part hereof by this reference as if fully rewritten, on DATE approving the Loan as described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants stated below and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the City and the Borrower agree as follows:

**Article I – Project**

**Section 1.01                      Loan Project**

Borrower shall undertake, or cause to be undertaken, permanent improvements to the structure located at 12501 Madison Avenue, Lakewood, Ohio 44107 further described in the *CDBG Economic Development Fund Project Profile*, attached hereto as **Exhibit B** and made a part hereof by this reference as if fully rewritten.

## Section 1.02

### Sources & Uses of Project Funds

The total cost of the project, as delineated in the *Project Budget*, attached hereto as **Exhibit C** and made a part hereof by this reference as if fully rewritten, is approximately **\$4,081,510** which shall be financed from the following sources:

- i) The Loan from City to Borrower which shall be in the amount of **One-Hundred Fifty Thousand Dollars (\$150,000)** in accordance with Article II and the other provisions of this Loan Agreement (Funds or Loan Funds).
- ii) Borrower equity and other sources in the amount of approximately **\$3,931,510**.

The Loan shall be contingent upon the Borrower's procuring either a contract from a reputable lender and/or showing documented evidence of the equity necessary to complete the Project. Borrower shall not employ financing sources other than those identified herein without prior written approval of the City.

## Section 1.03

### Use of City Loan Funds

The Loan from the City to the Borrower shall be in the amount of **One-Hundred Fifty Thousand Dollars (\$150,000)** in accordance with Article II and other provisions of this Loan Agreement. Such Loan Funds shall be used exclusively to finance soft costs including architecture/design, legal, accounting, and historic tax credit consulting and other CDBG-eligible, City-approved fees directly associated with the funded Project. City funds may not, under any circumstances, be utilized to finance hard construction costs including labor and building materials, associated with the Project. Borrower must submit invoices and proof of payment associated with totaling qualifying expenses in the amount of \$150,000.

## Section 1.04

### Timetable for Project Activities

Borrower shall substantially complete construction of the funded project on or before March 1, 2023.

## Section 1.05

### Guarantee of Completion

Borrower unconditionally and irrevocably guarantees timely completion of the Project in accordance with Section 1.04 of this Loan Agreement. To accomplish complete and timely execution of the Project, Borrower shall make payment for any cost overruns. This guarantee shall not hinder the City in any way from requiring other individuals or entities not party to this Agreement, including but not limited to tenants, contractors and subcontractors, to make similar guarantees in connection with the Project.

Upon the City's request, the Borrower shall provide the City a Completion Guaranty with respect to said obligation in the form of a Performance Bond, Letter of Credit or, if the City shall so require, a Completion Guaranty personally executed by the Borrower.

Successful completion of the Project is defined as substantially completing all work listed in Article I of this Agreement and further described in the *CDBG Economic Development Fund Project Profile*, attached hereto as **Exhibit B**, reasonably within the timetable referenced in Section 1.04 of this Agreement, and with expenditures commensurate with the Total Project Costs referenced in Section 1.01 of this Agreement.

If completion of the Project is delayed at any time by an act or neglect of the City or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond Borrower's control, the time for completion of the Project shall be extended by mutual agreement in writing between the Borrower and the City.



## **Section 1.06 Job Creation & Hiring Requirements**

### **A. Total & Low-Moderate Income Job Creation & Hiring Requirements**

Borrower agrees the funded Project will create no fewer than twenty-five (25) new, permanent, full-time equivalent (FTE) jobs within a period not exceeding twenty-four (24) months following Project completion according to the Timetable for Project Activities stipulated in Section 1.04 of this Agreement.

Moreover, Borrower pledges and will document, in accordance with U.S. Department of Housing & Urban Development (HUD) and City of Lakewood requirements, that at least 51 percent (51%), a minimum of thirteen (13), of the twenty-five (25) total jobs created, computed on a full time equivalent basis, are suitable for, made available to, and held by low-moderate income (LMI) persons earning less than 80% of the Area Median Income (AMI) by household size, prior to being hired, according to current *HUD Income Limits for the Cleveland-Elyria, Ohio Metropolitan Statistical Area*. HUD's FY21 Income Limits are attached hereto as **Exhibit D** and made a part hereof by this reference as if fully rewritten.

The standards for job creation are established by HUD at 24CFR §570.208 (Criteria for National Objectives) and 24CFR §570.209 (Guidelines for Evaluating & Selecting Economic Development Projects). Failure to create and fill these job opportunities within the above specified time period shall constitute loan default.

Prior to loan closing, Borrower shall complete and submit the *Job Creation & Hiring Plan*, attached hereto as **Exhibit E** and made a part hereof by this reference as if fully rewritten, indicating the FTE jobs to be created by Borrower's tenant businesses as a result of the funded Project and including the following information regarding each position: job title; full-time equivalency; estimated date position will be created and filled; suitability for performance by a low-moderate income person; whether or not health care benefits are provided; and HUD-defined job category.

### **B. Documentation of Low-Moderate Income Status & Other Characteristics**

Borrower agrees to utilize the *HUD CDBG Income Self-Certification & Data Form*, attached hereto as **Exhibit F** and made a part hereof by this reference as if fully rewritten, to document the annual household income, prior to being hired, and certain demographic characteristics of both applicants interviewed for and persons employed to fill all positions created as a result of the funded Project.

All job-related documentation identified herein must be retained for at least three (5) years following the date Borrower is notified in writing by the City its job creation and hiring requirements have been satisfied or, in the event of non-compliance, until Borrower is notified in writing by the City the loan has been repaid in full.

### **C. Reporting Requirements**

- No fewer than (25) new, permanent, full-time equivalent (FTE) jobs must be created by The Nest's tenant businesses within (12) months following completion of the funded project.
- At least 51% or (13) of the jobs created must be suitable for and filled by low-moderate-income (LMI) persons earning less than 80% of the Area Median Income (AMI) established annually by the U.S. Department of Housing Urban Development (HUD) prior to being hired.
- The Developer must submit Semi-Annual Job Creation & Hiring Reports documenting actual job creation and hiring by Borrower's tenant businesses as a direct result of the funded project for the duration of the loan term.
- Failure to fulfill CDBG job creation and hiring requirements within the performance period constitutes loan default.

Borrower agrees to convey actual job creation and employment activity by Borrower's tenant businesses to the City utilizing the *Job Creation & Hiring Report*, attached hereto as **Exhibit G** and made a part hereof by this reference as if fully rewritten, which must be completed and submitted according to the following schedule for the duration of this Agreement.

- i) Before July 31, describing job creation and hiring activities conducted between January 1 and June 30 of the current year, and;
- ii) Before January 31, describing job creation and hiring activities conducted between July 1 and December 31 of the previous year.

Each semi-annual *Job Creation & Hiring Report* must be accompanied by a copy of the Certified Payroll for each tenant business dated the final day of the reporting period (June 30 or December 31) and an *Income Self-Certification & Data Form* completed and signed by all persons interviewed to fill positions created as a result of the funded project.

Borrower assumes complete responsibility for ensuring tenant businesses located at the Project Site complete, maintain, submit, and retain all required job creation and hiring documentation and reports. Failure to do so to the City's and HUD's specifications and satisfaction shall constitute loan default.

## **Article II - The Loan**

### **Section 2.01 The Loan, Rate & Note**

Subject to the terms and conditions of this Agreement, together with the *Open-End Mortgage* and *Secured Promissory Note*, attached hereto as **Exhibit H** and **Exhibit I** and made a part hereof by this reference as if fully rewritten, the City agrees to lend to the Borrower the sum of **One Hundred Fifty Thousand Dollars (\$150,000)** subject to the conditions set forth in Section 2.02 Terms of Repayment and Section 2.03 Disbursement of Funds.

The Borrower's obligation to repay the Loan shall be evidenced by and repayable in accordance with the terms of this Agreement, the *Open-End Mortgage*, and *Secured Promissory Note* of even date.

### **Section 2.02 Terms of Repayment**

The principal sum of the Economic Development Fund Loan (Secured Promissory Note) shall be payable on demand upon default. In accordance with the provisions of this Agreement and the Secured Promissory Note of even date, the City shall forgive **Thirty Thousand Dollars (\$30,000)** of the original principal sum of **One Hundred Fifty Thousand Dollars (\$150,000)** of the Loan (Secured Promissory Note) each consecutive year commencing on **Effective Date + 1 Year** and continuing until the first to occur of: (a) the balance of the Economic Development Fund Loan (Secured Promissory Note) is \$0.00 or (b) the Borrower fails to comply with its obligations under this Economic Development Fund Loan Agreement and the *Secured Promissory Note* of even date in accordance with the terms and conditions set forth in this Agreement, the *Open-End Mortgage* and *Secured Promissory Note* of even date.

Borrower agrees to make all payments, if necessary, promptly and payable to the City of Lakewood at the following address, or at such other address as the City may designate in writing. All payments shall be applied first to interest or other fees and then to principal.

City of Lakewood  
Department of Planning & Development  
12650 Detroit Avenue  
Lakewood, Ohio 44107  
Attention: Director

## **Section 2.03 Disbursement of Loan Funds**

### **A. Requirements for Disbursement**

The loan funds shall not be disbursed until Borrower has submitted to the City, and had accepted by the City, any certificates, documents and instruments required by this Loan Agreement or the Loan Documents in forms satisfactory to the City and its attorneys; and

The loan funds shall not be disbursed until Borrower has submitted to City, and had accepted by the City, evidence of payment or an invoice for professional services in connection with the Project.

### **B. City to Disburse Funds to Borrower**

Upon receipt of the above information required in Section 2.03(A)(i)(ii), and any other requirements set forth by this Agreement, the City shall disburse Loan Funds to the Borrower for eligible costs, as listed in Section 1.02.

### **C. Disbursement Checks**

The Loan disbursement check shall be mailed to the following address until otherwise specified by the Borrower:

James Miketo, Owner  
Little Jemmy, LLC  
13369 Madison Avenue  
Lakewood Ohio 44107

## **Article III - Representations & Warranties**

Borrower represents and warrants to the City as of the Execution Date and throughout the term of this Agreement each of the requirements set forth in Section 3.01 to Section 3.11.

### **Section 3.01 Organization**

Borrower is an Ohio Limited Liability Company, duly organized, validly existing, and in good standing under the laws of Ohio and has power to carry on its business as it is presently being conducted, to enter into and observe the provisions of the Loan Documents and to borrow hereunder.

### **Section 3.02 Authorization**

Borrower's act of entering into and performing under this Agreement, including the execution and delivery of the Loan Documents, has been duly authorized by all necessary company action and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Borrower or any provision of Borrower's articles of incorporation or bylaws or result in a breach of, or constitute a default under, any indenture, bank loan, credit agreement, or any other agreement or instrument to which Borrower is a party or by which it or its property may be bound or affected.

### **Section 3.03 Enforceability**

When this Agreement is executed by both Borrower and the City, certified by the City's Director of Finance and approved by the City's Director of Law, and when the Loan Documents are executed and delivered by Borrower for value, each such instrument shall constitute the legal, valid, and binding obligation of the parties thereto in accordance with its terms.

#### **Section 3.04    Litigation**

There are no legal actions, suits, or proceedings pending, or, to the knowledge of Borrower, threatened against Borrower before any court or arbitrator, or administrative agency, which, if determined adversely to Borrower, would have an adverse effect on the financial condition or business of Borrower which have not been disclosed to the City.

#### **Section 3.05    Governmental Consents**

No authorization, consent, or approval, or any formal exception of any governmental body, regulatory authorities (federal, state, or local) or mortgagor, creditor, or third party is or was necessary to the valid execution and delivery by Borrower of the Loan Documents.

#### **Section 3.06    Absence of Default**

Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

#### **Section 3.07    Tax Returns & Payments**

Borrower has filed all required tax returns and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against Borrower or its personal or real property by any federal, state, or local taxing agency. The Internal Revenue Service, or any other federal, state, or local taxing agency, has not asserted any tax liability against Borrower for taxes materially in excess of those already provided for, and Borrower knows of no basis for any such deficiency assessment.

#### **Section 3.08    No Adverse Change**

Since the date of application for the Loan, there has been no material and adverse change in the financial condition, organization, operation, business prospects, fixed assets, or personnel of Borrower.

#### **Section 3.09    Material Fact**

No representation or warranty contained or made in this Agreement, and no certificate, schedule, or other document furnished or to be furnished in connection with this Agreement contains or will contain a misstatement of material fact or omits or will omit to state a material fact required to be stated herein or therein.

#### **Section 3.10    Prohibition of Conflict of Interest**

No individual who is an employee, officer, agent, consultant of the City, an elected public official, member of the City Council or appointed City public official, who exercises or has exercised any functions or responsibilities with respect to any activities that are connected with this Project or who is in a position to participate in a decision-making process or to gain inside information with regard to the Project, may obtain a personal or financial interest or benefit from the Project.

Nothing in this section shall prevent an individual connected with the Project from acting on a board which acts only in an advisory capacity, if that individual's connection to the Project is made known to the advisory body so that the advisory body may take action to address any conflict, including committee assignment, voting privileges, or attendance at meetings involving issues which may affect the Project.

Also, the aforementioned individuals shall not have an interest in any contract, subcontract, or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties. The above restrictions shall apply to all activities comprising the Project, and shall cover any such interest or benefit during or at any time after, such person's tenure and for one year thereafter.

### **Section 3.11 Full Understanding & Voluntary Acceptance**

Borrower represents that Borrower has had reasonable opportunity in the negotiation of this Agreement. Therefore, in any construction of this Agreement, the Agreement shall not be construed against any party on the basis that the party was the drafter.

In entering this Agreement, Borrower represents that it relied upon the advice of its attorneys who are attorneys of their own choice and that the terms of this Agreement and attached Exhibits and documents have been completely read and explained to Borrower by Borrower's attorneys, and that the terms are fully understood and voluntarily accepted by Borrower. Borrower represents that the City afforded Borrower the opportunity to completely read and ask questions of the City concerning the terms of this Agreement and attached Exhibits and documents and that Borrower fully understands and voluntarily accepts those terms.

## **Article IV – Conditions of Lending**

The obligation of the City to make the Loan shall be subject to the fulfillment to the City's satisfaction on the Execution Date of each of the following requirements set forth in Section 4.01 through Section 4.06.

### **Section 4.01 Execution & Delivery of Loan Documents**

Borrower shall execute and deliver to the City the Loan Documents each in a form and substance satisfactory to the City and its attorneys.

### **Section 4.02 Execution & Delivery of Open-End Mortgage and Secured Promissory Note**

Borrower's obligation to make payments of principal and interest on the Loan and any other sums payable under the Loan Agreement shall be stated in the *Open-End Mortgage* of even date and attached as **Exhibit H** and secured with the **Security Promissory Note** of even date and attached as **Exhibit I**.

### **Section 4.03 Governmental Approval**

Borrower shall secure all approvals, permits, and consents of governmental bodies having jurisdiction with respect to any Project activities.

### **Section 4.04 Approval of Others**

Borrower shall secure all necessary approvals and consents required with respect to this transaction by any mortgagee, creditor, or other party having any financial interest in Borrower or Borrower's property.

### **Section 4.05 No Event of Default & Representations and Warranties**

There shall exist as of the Closing Date no event or condition, which constitutes an Event of Default as hereinafter defined in Article VII, or which, after notice or lapse of time or both, would constitute such an Event of Default and no such event shall occur as a result of such borrowing.

#### **Section 4.06 Guaranties & Security**

Upon request, Borrower shall provide the City a corporate guaranty with respect to the Secured Promissory Note which shall guarantee the punctual and full payment of the principal and interest on the Loan as well as all other amounts payable by Borrower pursuant to this Loan Agreement, and the prompt observance and performance by the Borrower of all of the covenants, agreements, and other provisions in this Loan Agreement.

#### **Article V - Affirmative Covenants**

Borrower shall comply with the following covenants set forth in this article from the Execution Date until the Loan has been fully repaid to the City, including any interest obligation, unless the City otherwise consents in writing.

##### **Section 5.01 Repayment of Loan**

Borrower shall pay by the due dates established in the *Secured Promissory Note* of even date and attached as **Exhibit I** the principal and interest on the Note and any other amounts that become due and payable to the City pursuant to this Agreement or pursuant to the Loan Documents.

##### **Section 5.02 Payment of Other Indebtedness**

Borrower shall pay punctually the principal and interest and any other amounts due on any other indebtedness now or hereafter owing by Borrower to the City or any other lender.

##### **Section 5.03 Maintain & Insure Property**

Borrower shall maintain during the term of this Agreement the real and personal property provided as security for the Loan, in such condition, maintenance, and repair that the City's security will be adequately protected and that the business carried on in connection therewith may be properly and advantageously carried out at all times.

During the term of this Agreement, Borrower shall maintain insurance policies and submit copies of same to City, providing general liability coverage, property coverage (fire and extended coverage hazard or special form insurance policy), builders risk coverage (if applicable), workers' compensation insurance, and such other insurance reasonably required by the City and its attorneys in amount sufficient to avoid any significant out-of-pocket payment by borrower in the event of a reasonably insurable loss (except a reasonable deductible). The aforementioned insurance shall be issued by companies reasonably satisfactory to the City with language specifically indicating that the City is an "additional insured" and/or "loss payee," as appropriate to the type of coverage, and that any insurance proceeds will be paid to the City.

##### **Section 5.04 Payment of Taxes**

Borrower shall duly pay and discharge all applicable taxes, assessments, and governmental charges levied upon it or against its properties prior to the date on which penalties would attach thereto, except that Borrower shall not be required to pay any such tax, assessment or governmental charge which is being contested by Borrower in good faith and by appropriate and timely proceedings, provided that Borrower provides prior written notice to the City of the contest and proceedings.

#### **Section 5.05 Maintain Existence**

Borrower agrees to maintain its existence within the City of Lakewood, Ohio in full force and effect and to carry on its business at 13001 Athens Avenue, Lakewood, OH 44107 in a manner intended to be profitable for the term of Loan (Five [5] years). Borrower may merge, consolidate, or otherwise reorganize only upon written permission from the City, which permission shall not be unreasonably withheld.

#### **Section 5.06 Information**

During the term of this Agreement, Borrower shall:

- (i) Keep and maintain records, books of account and other documents relating directly to all matters covered by this Agreement, including its receipt and disbursement of Loan funds, in which complete entries will be made reflecting all of its business and financial transactions, such entries to be made in accordance with generally accepted accounting principles consistently applied.
- (ii) Comply with all reporting requirements of the United States Department of Housing and Urban Development (HUD) and the City of Lakewood.

#### **Section 5.07 Disclosure of Documents**

All of the records, information, data, reports, etc., prepared or assembled by the Borrower under this Agreement are confidential and the Borrower does covenant and agree that those items shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior written approval of the City.

Applicable federal, state, and local laws shall govern disclosure of documents, which are in the possession of the City.

#### **Section 5.08 Inspection**

Borrower shall permit any duly authorized representative of the United States Department of Housing and Urban Development (HUD), the City, or any other appropriate governmental official at all reasonable hours, upon reasonable notice, and as often as reasonably requested, to have the right to (1) inspect the personal property, and real estate used to secure the Loan; (2) inspect Borrower's books of account (and to make copies of and/or extracts therefrom); or (3) discuss with agents and employees of Borrower: Borrower's affairs, employment and contracting goals, finances, accounts and compliance with the terms of this Agreement.

Borrower shall provide statements, records, data and the City free access and entry to any portion of Borrower's premises for the purposes of such inspections and discussions until the terms of this Agreement have been complied with and fulfilled.

#### **Section 5.09 Notice of Default**

Within ten (10) days of any event, which constitutes an Event of Default, as defined in Article VI, or as defined under any of the Loan Documents, Borrower shall provide written notice to the City of the event. If an event occurs which would, with notice or lapse of time, constitute an Event of Default; Borrower shall likewise give notice to the City within ten (10) days of the discovery of that event.

### **Section 5.10 Indemnification**

Borrower shall be fully responsible and shall indemnify and hold harmless the City, its officials, employees and agents against all liability, claims, demands, losses, damages, delays and costs arising from any act or omission by, or negligence of Borrower and its officers, agents, or employees or its contractor or subcontractor or the officers, agents or employees of the contractor or subcontractor while engaged in the performance of this Agreement.

Also, no member, official, or employee of the City or of its agents or contractors shall be personally liable to Borrower in the event of any default or breach of the Agreement by the City.

### **Section 5.11 Expense of Collection or Enforcement**

In the event Borrower defaults on any provision or obligation contained in the Loan Documents or this Agreement, Borrower shall pay the City an amount equal to the City's costs and expenses of collection, enforcement or correction of such default in addition to any other amounts that may be due from Borrower on the Loan.

Moreover, the Borrower's obligations and duties to the City, which are set forth in this Section, shall continue unabated until the City has no environmental obligations or liabilities under any local, state or federal laws and any rules or regulations thereunder.

## **Article VI – Events of Default**

The entire unpaid principal of the Note and any other amounts due under the Loan Documents shall become and be immediately due and payable upon the written demand of the City, without any other notice or demand of any kind of presentment or protest, if any one of the following events occurs (an "Event of Default") and is continuing at the time of such demand, whether it is voluntary or involuntary or, without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

### **Section 6.01 Default & Cure**

- (i) Default Under Note -- If Borrower shall fail to comply with its obligations under this Agreement and the Secured Promissory Note of even date.
- (ii) Payment Default Under Other Indebtedness -- If default shall exist in the payment when due of any installment of principal or interest on any of Borrower's other indebtedness and if such default shall remain unremedied for thirty (30) days whether such other indebtedness is in existence at the Execution Date or incurred after such date;
- (iii) Incorrect Representations or Warranties -- If any representation or warranty contained in or made in connection with the execution and delivery of this Agreement or in any certificate furnished pursuant hereto shall prove to have been incorrect or untrue in any material respect when made;
- (iv) Default in Covenants -- If Borrower defaults in the performance of any other term, covenant, or agreement contained in the Loan Documents and such default shall continue unremedied for thirty (30) days after the earlier of either: (1) the default becoming known to an executive officer of Borrower; or (2) written notice thereof was given to Borrower by City;



- (v) Voluntary Insolvency -- If Borrower becomes insolvent, ceases to pay its debts as they mature, voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator, for itself or a substantial portion of its assets, with the purpose of effecting a plan or other arrangements with creditors, is adjudicated bankrupt, or makes a voluntary assignment for the benefit of creditors;
- (vi) Involuntary Insolvency -- If an involuntary petition is filed against Borrower under any bankruptcy, insolvency, or similar law seeking the reorganization of, or the appointment of any receiver, trustee, or liquidator, for Borrower or a substantial part of its assets, or a writ or warrant of attachment or similar process is issued against a substantial part of Borrower's assets, and such petition is not dismissed, or such writ or warrant is not released or bonded, within thirty (30) days after the filing or levy; and
- (vii) Judgments -- If final judgment is entered against Borrower for the payment of money and such judgment is not fully covered by liability insurance and is in excess of Ten Thousand Dollars (\$10,000) and is not discharged or appealed with execution of said judgment stayed pending appeal, or, if such judgment be affirmed on appeal and not discharged within thirty (30) days.

## **Section 6.02 Remedies**

If the Borrower defaults and fails to cure as set forth in Article VI of this Agreement, then the City shall have the right to exercise concurrently or successively any one or more of the following rights and remedies:

- (i) Wholly or partially terminate this Loan Agreement and Borrower's rights herein;
- (ii) Temporarily or permanently withhold or reduce funds not yet paid to the Borrower;
- (iii) Recover funds previously paid to the Borrower;
- (iv) Disallow all or part of the cost of a noncompliant activity;
- (v) Wholly or partially suspend the Agreement;
- (vi) Exercise any and all additional rights the City may have in law or equity.

Termination pursuant to clause (i) above shall be effective five (5) days after the date the City has given written notice to the Borrower of such termination. If City chooses any of the other remedies outlined, that remedy is effective immediately upon default of any of the obligations pursuant to this Agreement.

## **Article VII- Miscellaneous**

### **Section 7.01 Waivers**

The City's failure or delay in exercising any right, power, or remedy hereunder shall not operate as a waiver thereof. The City's single or partial exercise of any such right, power or remedy shall not preclude any other or further exercise thereof of the exercise of any other right, power or remedy hereunder.

No modification or waiver of any provision of the Loan Documents, nor any consent to any departure by Borrower therefrom, shall in any event be effective or established by a court, custom, or course of dealing unless the same is in writing and executed by Borrower and the City. Such waiver of consent shall be effective only for the specific purpose for which it was given or limited to the particular breach so waived. Notice to or demand on Borrower in one instance shall not entitle Borrower to any other further notice or demand in other circumstance.

## **Section 7.02 Agreement Amendments**

Borrower and the City hereby expressly reserve all rights to amend or to consent to, or waive, departure from any provisions of the Loan Documents and to release or otherwise deal with any collateral security for the payment of the Note; provided, however, that the Borrower must receive the prior written approval of the City and that all such amendments shall be in writing and executed by Borrower and the City.

## **Section 7.03 Notices & Communications**

All notices, consents, requests, demands and other communications required hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed as follows:

**If to the City, by certified mail, prepaid, at:**

City of Lakewood  
Department of Planning & Development  
Attn: Director of Planning & Development  
12650 Detroit Avenue  
Lakewood, Ohio 44107

**With a copy to:**

City of Lakewood  
Department of Law  
12650 Detroit Avenue  
Lakewood, Ohio 44107  
Attn. Law Director

**If to the Borrower:**

James Miketo  
Little Jemmy, LLC  
13369 Madison Avenue  
Lakewood, OH 44107

## **Section 7.04 Survival of Representations & Warranties**

All agreements, representations, and warranties made by Borrower and City in connection with the Loan or the Loan Documents shall survive the delivery of the Loan Documents and shall continue in full force and effect so long as the Note is outstanding.

## **Section 7.05 Successors & Assignments**

This Agreement shall be binding upon and shall inure to the benefit of Borrower and the City. When used herein, the terms "Borrower" and "City" shall include any successors and permitted assignees or any entity designated by either party to carry out the obligations of the party regarding the Project.

## **Section 7.06 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **Section 7.07 Prohibition Against Assigns**

Borrower shall remain primarily liable for all obligations, terms, conditions and covenants stated herein. Borrower shall not assign, delegate, or transfer any or all of its rights or obligations under the Loan Documents without obtaining the prior written approval of the City, which permission shall not be unreasonably withheld; provided, however, that if the City approves such assignment or transfer, then Borrower and/or the permitted assignees shall be bound by the terms and conditions of the Agreement, together with the *Open-End Mortgage* and *Secured Promissory Note* of even date and attached hereto as **Exhibit X** and **Exhibit X** and made a part hereof by this reference as if fully rewritten.

#### **Section 7.08 Compliance with Federal, State & Local Laws and Regulations**

Borrower and its subsidiaries, if any, shall comply with all applicable federal laws and regulations thereunder, executive orders and circulars, governing the receipt, expenditure, and use of the Funds.

Borrower agrees that in carrying out the Project, it, or its contractor, shall comply with all applicable housing, building, and public health codes and any laws, ordinances, regulations, administrative rulings, and policies of the City pertaining to the Project.

#### **Section 7.09 Severability**

In the event that any provisions of the Loan Documents or the application thereof is declared null and void, invalid, or illegal, or is held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of each of the Loan Documents shall remain in full force and effect and shall not be in any way affected, impaired, or invalidated by those provisions. All covenants, conditions, and agreements contained in the Loan Documents are deemed and agreed to be separate.

#### **Section 7.10 Choice of Law**

This Loan Agreement shall be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio without regard to principles of conflicts of laws.

#### **Section 7.11 Term of Agreement**

This Loan Agreement shall remain in full force and effect until the satisfaction or cancellation of the Note.

(Signatures on following page)

In witness whereof, after due authorization, the parties have each caused this Loan Agreement to be duly executed as of the Effective Date above.

**City of Lakewood, OHIO**

\_\_\_\_\_  
Meghan F. George, Mayor

**Address** 12650 Detroit Avenue  
Lakewood, Ohio 44107

**Little Jemmy, LLC**

**By:** \_\_\_\_\_  
James Miketo, Owner

**Address** 13369 Madison Avenue  
Lakewood, OH 44107

**Approved As To Legal Form**

**By:** \_\_\_\_\_  
**Jennifer Swallow**

**Title:** Chief Assistant Law Director

**Date:**

## **Exhibits**

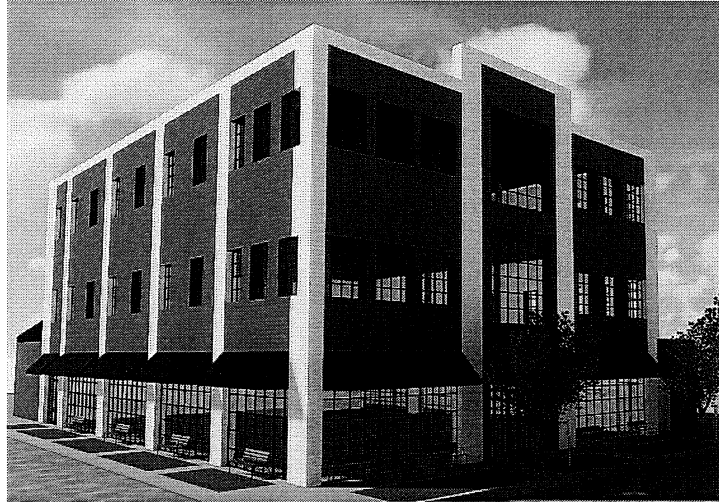
<b>Exhibit A</b>	Lakewood City Council Resolution XXXX-XX
<b>Exhibit B</b>	CDBG Economic Development Fund Project Profile
<b>Exhibit C</b>	Project Budget
<b>Exhibit D</b>	FY21 HUD Income Limits - Cleveland-Elyria, Ohio MSA
<b>Exhibit E</b>	Job Creation & Hiring Plan
<b>Exhibit F</b>	HUD CDBG Income Self-Certification & Data Form
<b>Exhibit G</b>	Semi-Annual Job Creation & Hiring Report Form
<b>Exhibit H</b>	Open-End Mortgage
<b>Attachment A</b>	Legal Property Description
<b>Exhibit I</b>	Secured Promissory Note
<b>Exhibit J</b>	CDBG Special Contract Provisions

**Exhibit A**  
**Lakewood City Council Resolution XXXX-XX**

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**Exhibit B**  
**CDBG Economic Development Loan Fund Project Profile**

**The Nest Retail & Office Property**



<b>Project</b>	The Nest Retail & Office Property
<b>Developer</b>	Little Jemmy, LLC 13369 Madison Avenue Lakewood, OH 44107 Jim Miketo, Managing Member
<b>Project Site</b>	12501 Madison Avenue
<b>Construction Period</b>	September 2021 – March 2023 (18 Months)
<b>Total Project Costs</b>	\$4,081,510
<b>Funding Sources</b>	
CDBG EDF Loan	\$150,000 (3.67% Total Project Costs)
Construction Loan	\$2,050,000
Historic Preservation Tax Credits	\$1,020,681
Owner Equity*	<u>\$810,829</u>
<b>Total Project Costs</b>	<b>\$4,081,510</b>

*\*Developer will receive a City of Lakewood Storefront Renovation grant in the amount of \$50,000 in the form of reimbursement for eligible expenditures.*

**Project Summary**

The Nest Retail & Office Project, located in at 12501 Madison Avenue in the City's historic Birdtown neighborhood, will transform the vacant, approximately 18,000sf, three-story former Bi-Rite building into regionally competitive retail and office space. The approximately half acre site features 24 parking spaces, a rare commodity in Birdtown. The property was purchased for \$750,000 in October 2019 by developer Little Jemmy, LLC.

The project entails the substantial rehabilitation of the entire structure including asbestos/hazardous material remediation; correction of all code violations; roof replacement; installation of a sprinkler/fire suppression system; and a new code-compliant elevator and staircase .

Lead by Managing Member Jim Miketo, Little Jemmy has successfully acquired, rehabilitated, and leased more than \$10M of real estate in the Cleveland area over the past two years including a partnership with Knez Homes to re-develop Glenville's iconic Hough Bakery Building.

The following businesses have already committed to leasing space in The Nest.

- *Phoenix Coffee* (1,000sf/1<sup>st</sup> Floor/5 Year Lease): The chain's 6<sup>th</sup> Cleveland location.
- *Shuffleboard Group Bar & Restaurant* (6,000sf/1<sup>st</sup> Floor/10 Year Lease): An extension of Miketo's successful "Forest City Shuffleboard" brand located at 4506 Lorain Avenue in Cleveland. It will feature a full service bar/restaurant and golf simulator rental booths.
- *Heyday Collective* (5,400sf/3<sup>rd</sup> Floor/10 Year Lease): A luxury salon offering a broad array of unique services including dimensional hair color, hand-tied hair extensions, bridal styling, and permanent eye brows. Having outgrown its current space in the Forest City Shuffleboard building, Heyday will expand their footprint and operations in The Nest. Booths for rental by licensed stylists are an additional revenue stream.

This transformational real estate development project will fully rehabilitate a significant, historic, long-vacant property; generate significant income and property tax revenue; and both complement and fortify the significant ongoing investment of public and private resources in the revitalization of the Birdtown Historic District.

#### **Lakewood's CDBG Economic Development Loan Fund**

The Economic Development Fund (EDF) provides low- and no interest repaid and forgivable loans to for-profit businesses seeking to relocate to or expand their current operations in the City of Lakewood. Its primary goals are creating new, permanent full-time equivalent jobs, particularly for low-moderate income persons; stimulating redevelopment and revitalization; generating new income and property tax revenue; upgrading the City's commercial and industrial and building stock; and enhancing Lakewood's regional competitiveness.

#### **The Nest CDBG Economic Development Fund Loan Terms**

- 0% Interest/No Payments
- Forgivable over five (5) years at \$30,000 per annum.
- Forgiveness is predicated upon satisfaction of all EDF loan terms including timely project completion and fulfillment of the total and low-moderate income job creation and hiring goals described below.
- To secure the City's investment, a \$150,000 lien will be placed on 12501 Madison Avenue in the form of an Open-End Mortgage releasable over five (5) years in \$30,000 increments predicated on fulfillment of all loan terms and conditions.
- A Secured Promissory Note in the amount of \$150,000 will also be executed with Little Jemmy, LLC.
- Little Jemmy must obtain public and private financing commitments equal to total project costs minus the City's participation prior to issuance of CDBG Economic Development funds.
- The expenditure of City loan funds is restricted to soft costs including architecture/design, legal, accounting, and historic tax credit consulting and other CDBG-eligible, City-approved fees directly associated with the funded Project.
- Developer must submit invoices and proof of payment associated with totaling qualifying expenses in the amount of \$150,000.



### CDBG Job Creation & Hiring Requirements

The developer must adhere to the following CDBG job creation and hiring requirements.

- No fewer than (25) new, permanent, full-time equivalent (FTE) jobs must be created by The Nest's tenant businesses within (12) months following completion of the funded project.
- At least 51% or (13) of the jobs created must be suitable for and filled by low-moderate-income (LMI) persons earning less than 80% of the Area Median Income (AMI) established annually by the U.S. Department of Housing Urban Development (HUD) prior to being hired.
- The Developer must submit semi-annual Job Creation & Hiring Reports documenting actual job creation and hiring by Nest tenant businesses as a direct result of the funded project for the duration of the loan term.
- Failure to fulfill CDBG job creation and hiring requirements within the performance period constitutes loan default.

**Aerial View  
The Nest Project Site  
12501 Madison Avenue**



Exhibit C

<b>Project Budget</b>	
<b>The Nest Retail &amp; Office Development</b>	
<b>Sources</b>	
Sponsorship Equity	\$810,829
Construction Loan	\$2,050,000
Historic Preservation Tax Credits (State & Federal)	\$1,020,681
City of Lakewood CDBG EDF Loan	\$150,000
City of Lakewood Storefront Rebate/Grant	\$50,000
<b>Total Sources</b>	<b>\$4,081,510</b>
<b>Uses</b>	
Property Acquisition	\$750,000
Hard Costs	\$2,126,600
Contingency	\$212,660
Architect Fees	\$175,000
Permits	\$50,000
Developer Fee	\$200,000
Capitalized Interest	\$131,000
Legal / Accounting	\$125,000
Operating Reserve	\$50,000
Historic Consultant	\$145,000
Insurance / Real Estate Taxes	\$30,000
Title Work / Survey	\$10,000
Environmental	\$25,000
Closing Costs (reports, legal, title, survey, fees)	\$51,250
<b>Total Uses</b>	<b>\$4,081,510</b>

**Exhibit D**  
**FY21 HUD Income Limits – Cleveland-Elyria, Ohio MSA**

<b>2021 HUD Income Limits (Cleveland-Elyria, OH)</b>				
<b>HH Size</b>	<b>Non Low-Mod Income (80% AMI+)</b>	<b>Low-Mod Income (51-80% AMI)</b>	<b>Low-Income (31-50% AMI)</b>	<b>Extremely-Low Income (0-30% AMI)</b>
<b>1</b>	\$44,051+	\$27,551 - \$44,050	\$16,551 - \$27,550	\$0 - \$16,550
<b>2</b>	\$50,351+	\$31,451 - \$50,350	\$18,901 - \$31,450	\$0 - \$18,900
<b>3</b>	\$56,651+	\$35,401 - \$56,650	\$21,961 - \$35,400	\$0 - \$21,960
<b>4</b>	\$62,901+	\$39,301 - \$62,900	\$26,501 - \$39,300	\$0 - \$26,500
<b>5</b>	\$67,951+	\$42,451 - \$67,950	\$31,041 - \$42,450	\$0 - \$31,040
<b>6</b>	\$73,001+	\$45,601 - \$73,000	\$35,581 - \$45,600	\$0 - \$35,580
<b>7</b>	\$78,001+	\$48,751 - \$78,000	\$40,121 - \$48,750	\$0 - \$40,120
<b>8</b>	\$83,051+	\$51,901 - \$83,050	\$44,661 - \$51,900	\$0 - \$44,660

**Exhibit E**  
**Job Creation & Hiring Plan**

City of Lakewood Economic Development Loan Program Job Creation & Hiring Plan									
<b>Borrower</b>									
<b>Project</b>									
<b>Loan Amount</b>									
<b>Loan Term</b>									
<b>Total Job Creation Goal</b>									
<b>Low-Mod Job Creation Goal</b>									
<b>Job Creation Period</b>									
#	Job Title	Est Hire Date (Month & Year)	LM Eligible Position	Hlth Care Benefits	Full-Time	Part-Time		HUD Job Class #	<div style="border: 1px solid black; padding: 5px; font-size: 0.8em;"> <b>HUD Job Classifications</b>            1 Officials/ Mgrs    6 Craft Worker            2 Professional      7 Operative            3 Technicians        8 Laborer            4 Sales                9 Service Worker            5 Office/Clerical         </div>
						Hours / Week	FTE		
1							0.00		<b>Job Duties</b>  
2							0.00		
3							0.00		
4							0.00		
5							0.00		
6							0.00		
7							0.00		
8							0.00		
9							0.00		
10							0.00		
<b>Totals</b>			0	0	0	0.00	0.00		
<b>Certification</b> <i>I certify the information provided is complete and accurate to the best of my knowledge.</i>									
Printed Name			Signature				Title		

**Exhibit F**  
**HUD CDBG Income Self-Certification & Data Form**

This organization receives federal funding from the City of Lakewood which requires the collection the following data. We appreciate your cooperation and guarantee the confidentiality of all information provided.

Name (please print) \_\_\_\_\_

**I. Household Income**

Please indicate your annual **Household (HH) Income Category** based on the information in the table below. *A household is defined as all persons living in the same residence related by blood, marriage, or adoption.*

**My Annual Income by Household Size Falls Within (please circle one):** Category 1 Category 2 Category 3  
Category 4

5354#KXG#qfrp h#Dp lw#F dnyhagqGh ukd/8K, -hihfwyH#B 148154#Kqwd#xukhu#r wifh#				
KK#	F dwhjru  # Qrq#Orz ( P rg# Iqfrp h	F dwhjru  # Orz P rg#qfrp h	F dwhjru  # Orz Iqfrp h	F dwhjru  # H{whp hq 0 Orz #qfrp h#
Vl h	#. ; 3 ( #P L	+840; 3 ( #P L	+64083 ( #P L	+3063 ( #P L
4	'77/84.	'5:884#0# 77/83	'49/884#0# 5:883	'3#0# 49/883
5	'83/84.	'64/784#0# 83/683	'4; /k34#0# 64/783	'3#0# 4; /k33
6	'89/84.	'68/734#0# 89/83	'54/k94#0# 68/733	'3#0# 54/k93
7	'95/k34.	'6</634#0# 95/k33	'59/834#0# 6</633	'3#0# 59/833
8	'9: /k84.	'75/784#0# 9: /k83	'64/774#0# 75/783	'3#0# 64/773
9	' :6/834.	'78/834#0# :6/833	'68/8; 4#0# 78/833	'3#0# 68/8; 3
:	' : /834.	'7; /:84#0# : /833	'73/454#0# 7; /:83	'3#0# 73/453
;	' ; /684.	'84/k34#0# ; /683	'77/894#0# 84/k33	'3#0# 77/893

**II. Race/Ethnicity**

Race/Ethnicity Category	Hispanic/Latino	Not Hispanic/Latino
White		
Black/African American		
Asian		
American Indian/Alaskan Native		
Native Hawaiian/Other Pacific Islander		
American Indian/Alaskan Native & White		
Asian & White		
Black/African American & White		
American Indian/Alaskan & Black/African American		
Other Multi-Racial		

- III. Female Head of Household ☐ Yes ☐ No  
IV. Senior Citizen 62+ Years of Age ☐ Yes ☐ No  
V. Currently Have Health Care Benefits ☐ Yes ☐ No  
VI. Currently Unemployed ☐ Yes ☐ No

I hereby attest the information provided is true and accurate to the best of my knowledge.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Administrative Use Only			
Was position created in association with EDF-funded project?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Was the applicant interviewed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Was the applicant hired? <input type="checkbox"/> Yes <input type="checkbox"/> No
If hired: Hire Date: _____	FTE: _____	Job Title _____	
Initial Hire <input type="checkbox"/> Yes <input type="checkbox"/> No	HUD Job Category _____		

**Exhibit G**  
**Semi-Annual Job Creation & Hiring Report Form**

City of Lakewood CDBG Economic Development Loan Program Semi-Annual Job Creation & Hiring Report																							
Reporting Period																							
Borrower																							
Business Name																							
Prepared By		Phone								Email													
Total FTE Job Creation Goal						LMI Job Creation/Hiring Goal																	
Job Category, Job Title & Employee Names		Job/Position Data						Applicant & Actual Beneficiary Data															
		LMI-Eligible?	Listed on Payroll	Position Currently	Health Care Benefits	Full-Time	Part-Time	Part-Time Hrs/Week	Part-Time FTE	# LMI Persons	New Hire This Period	Hire Date	Leave Date	Tenure (Months)	Cert Form Submitted	Unemployed before	Hired	HH Income Category	Race	Hispanic Ethnicity	Female-Headed HH	Handicap/Disability	62+ Years of Age
JOB CATEGORY								0.00															
Job Title																							
Employee 1																							
Employee 2																							
Employee 3																							
JOB CATEGORY								0.00															
Job Title																							
Employee 1																							
Employee 2																							
Employee 3																							
JOB CATEGORY								0.00															
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Employee 3																							
JOB CATEGORY								0.00															
Job Title:																							
Employee 1																							
Employee 2																							
Employee 3																							
JOB CATEGORY								0.00															
Job Title																							
Employee 1																							
Employee 2																							
Employee 3																							
<b>Totals</b>		0	0	0	0	0	0	0.00	0					0	0			0	0	0	0		

**Certification:** I certify the information provided on this form is complete and correct to the best of my knowledge.

Authorized Signature

Title

Date

**Exhibit H**  
**Open-End Mortgage**

This Open-End Mortgage is executed and made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Little Jemmy, LLC (Mortgagor), whose address is 13369 Madison Avenue, Lakewood, Ohio 44107 in favor of the City of Lakewood, Ohio, a political subdivision of the state of Ohio and whose address is 12650 Detroit Avenue, Lakewood, Ohio 44107 (hereinafter called "Lender").

**WHEREAS**, Mortgagor is indebted to Lender in the principal sum of **One Hundred Fifty Thousand Dollars (\$150,000)**, which indebtedness is evidenced by Mortgagor's promissory note of even date herewith (the "Note"); and

**NOW, THEREFORE**, to secure to Lender: (a) the repayment of: (i) the indebtedness evidenced by the Note and (ii) all other sums advanced in accordance herewith to protect the security of this Mortgage, all with interest thereon; and (b) the performance of the covenants and agreements of Borrower herein contained, Mortgagor does hereby execute and deliver this Mortgage, and hereby grants and conveys to Lender a security interest in all of Mortgagor's estate, title and interest in the property located in Lakewood, County of Cuyahoga and State of Ohio as described in Attachment A, attached hereto and made a part hereof; said premises more commonly known as 12501 Madison Avenue, Lakewood, Ohio (hereinafter from time to time the "Property"); and

In furtherance hereof, the Mortgagor represents and covenants to Lender:

1. That at the execution and delivery of this Mortgage, Mortgagor is well-seized of the Property in fee simple, has good and marketable title and right to bargain and sell the same in manner and form as above written, that the same is free from all encumbrances whatsoever except for easements, covenants, conditions, restrictions, limitations and liens of record on the date hereof; and that Mortgagor will warrant and defend said Property, as above conveyed, with the above-mentioned appurtenances to the said Lender, its successors, agents and assigns, forever, against all lawful claims or demands whatsoever.
2. That the lien, pledge and security interest of this Mortgage is a good and valid lien, pledge and security interest on all of the Property, subject to one (1) mortgage in favor of Cortland Bank (hereinafter collectively referred to as the "Senior Mortgage"). All rights granted to the Lender hereunder are subject and subordinate to the holders of the Senior Mortgage.
3. To promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, late charges as provided in the Note, and the principal of and interest on any future advances secured by this Mortgage. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any amount thereof.
4. To pay all ground rents (if any), taxes, water rates, public or private utility charges, and other governmental or municipal charges, fines, impositions, assessments, of any kind levied or imposed against the Property, and, upon request therefor, to promptly deliver the official receipts thereof to Lender or its designated agent. Tax receipts are to be delivered semi-annually and within 30 days after payment.
5. To keep the Property fully insured for the benefit of Lender in insurance companies acceptable to Lender or its designated agent, to deposit the policies of insurance with Lender or its designated agent, and to name Lender as a beneficiary on the face of said insurance policy. Receipts for payment of such insurance premiums are to be delivered not less than annually.



Provided that; paragraphs 4 and 5 shall be deemed as properly performed by Mortgagor to the extent the Senior Mortgage is in effect which makes full provisions for the fulfillment of all such obligations of Mortgagor, so long as the Lender is added as a named beneficiary of said insurance policies, and receipts are promptly delivered to Lender or its designated agent.

6. To assign to Lender (subject to the Senior Mortgage and any senior lenders rights), the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation. Said proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Mortgagor. In the event of a partial taking of the Property, there shall be applied to the sums secured by this Mortgage such proportions of the proceeds as are equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of the taking bears to the fair market value of the Property immediately before taking, with the balance of the proceeds paid to Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, any such applications of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in the recitals above, or change the amount of such installments.

7. To pay to Lender or its designated agent the total amount due under this Mortgage upon demand, should Lender accelerate the indebtedness pursuant to paragraph 12 below.

8. To keep the Property in as good order and condition as they are now, together with any improvements thereon, reasonable wear and tear excepted, and will not commit or permit waste and shall make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall not do, or permit to be done, any act or thing which might materially impair the value or usefulness of the Property or any part thereof, shall not commit or permit any waste of the Property or any part thereof, and shall not permit any unlawful occupation, business or trade involving the Property to be conducted. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Mortgagor notice prior to any such inspections specifying reasonable cause therefor related to Lender's interest in the Property.

9. Mortgagor shall, at Mortgagor's own expense, from time to time as requested by Lender, take such actions and execute and deliver to Lender all such instruments, supplements, further assurances and security or other agreements as may be required or requested by Lender in order to perfect and continue Lender's lien, pledge and security interest in the Property hereunder. Mortgagor hereby irrevocably appoints Lender as Mortgagor's agent and attorney-in-fact to sign all such instruments, supplements, further assurances and security and other agreements in the event that Mortgagor shall fail to do so upon request by Lender.

10. Except as otherwise expressly permitted by the Note and this Mortgage, Mortgagor shall not directly or indirectly sell, convey, assign, transfer or otherwise dispose of fee title to the Project facilities or any part thereof or interest therein without the prior written consent of Lender, which consent shall not be unreasonably withheld. Mortgagor shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Property or any part thereof or the interest of Lender therein or any revenues, income or profit or other sums arising from the Property or any part thereof. Notwithstanding the foregoing, no consent by Lender shall be necessary in connection with the transfer of membership interests in the Mortgagor.



11. Mortgagor shall not suffer or permit any mechanics' or other liens to be filed or to exist against the Property or any payments paid or payable under the Loan Documents, by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Property or to Mortgagor, or anyone holding the Property or any part thereof through or under Mortgagor. If any such lien shall at any time be filed, Mortgagor shall, within thirty (30) days after notice of the filing thereof but subject to the right to contest as herein set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, Mortgagor shall have the right, at Mortgagor's expense and after written notice to Lender, by appropriate proceeding timely instituted and diligently prosecuted, to contest in good faith the validity or the amount of any such lien. If, however, Lender shall notify Mortgagor that, in the opinion of independent counsel, by nonpayment of any such items the lien, pledge or security interest created by this Mortgage as to any part of the Property will be materially affected or the Property or any part thereof will be subject to imminent loss or forfeiture, Mortgagor shall promptly cause such lien to be discharged of record, as herein provided.

12. On the breach of any condition or covenant of this Mortgage or on default under the Promissory Notes secured hereby, Lender has the following remedies, subject to the rights of the holders of the Senior Mortgage:

a. Foreclosure proceedings may be instituted at the option of Lender, and the fees and charges of Lender's attorneys shall be a further lien and charge upon the Property under this Mortgage, and all such expenses shall become additional indebtedness secured by this Mortgage and shall be allowed in any decree foreclosing this Mortgage. Notwithstanding the foregoing, Lender shall not foreclose upon any part of the Property so long as HUD maintains a first mortgage with respect to such part of the Property.

b. Acceleration of the unpaid principal balance together with all interest and charges thereon, may, at the option of the Lender, be declared immediately due and payable, without notice or demand, such notice or demand being expressly waived by Mortgagor.

c. Exercise of all or any rights and remedies as Lender may have under the Loan Documents; and of any rights, remedies and powers Lender may have at law or in equity.

Provided that, prior to foreclosure or acceleration, Lender shall mail notice to Mortgagor specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to the Mortgagor, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding and sale of the Property. Upon payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

13. Upon failure of Mortgagor to pay any ground rents, taxes, water rates, public or private utilities, other governmental charges, insurances policy premiums, prior liens, and charges thereon, which Mortgagor has agreed to pay under paragraphs 4 and 5 above, Lender may, at its option, pay the same, and any amount so paid by Lender shall be added to the principal debt named herein and bear interest at the rate charged by the prior lienholder, payable monthly, from the date of such payment, and shall be secured by this Mortgage.

14. Subject to the rights of the holders of the Senior Mortgage, Lender shall have the right at its option, to collect the rental income and proceeds of the Property, if any, or to appoint a receiver to take possession of and manage and control the premises.

15. Any forbearance by the Lender in exercising any right or remedy hereunder, or otherwise provided by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised cumulatively, concurrently, independently or successively.

16. Indemnification. Mortgagor shall protect, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses except as may be limited by law or judicial order or decision entered in any action brought to recover moneys under this Section) imposed upon, incurred by or asserted against Lender by reason of (a) ownership of any interest in the Property; (b) any accident or injury to or death of persons, or loss of or damage to property occurring on or about the Property or any part thereof or adjacent real property, sidewalks, curbs, vaults and vault space, if any, streets or ways or with respect to the operation of Mortgagor's business including but not limited to Mortgagor's ownership of or interest in any of the Property or any part thereof; (c) any use, disuse, non-use or condition of the Property or any part thereof or adjacent real property sidewalks, curbs, vaults and vault space, if any, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms hereof or of the Note or any other instrument or document executed in connection with the transactions contemplated herein and therein; (e) any necessity to defend any right, title or interest conveyed by this Mortgage or to defend any action arising from the creation or perfection of any such right, title or interest; (f) the performance of any labor or services or the furnishing of any materials or other property in respect to the Property or any part thereof; (g) any loss of or damage to property, or injury to or death of any person, that may be occasioned by any cause pertaining to the provision of any part of the Property; (h) any breach or default arising from any act or failure to act by Mortgagor or any of its agents, lessees, contractors, servants, employees or licensees or arising from any accident, injury or damage caused to any person and occurring with respect to the operation of Mortgagor's business including Mortgagor's ownership of or interest in any of the Property; or (i) any such claim, action, or proceeding brought thereon. If any action or proceeding is made or brought against the City in respect of which indemnity may be sought hereunder, Lender shall give notice to Mortgagor of the action or proceeding and upon such notice, at the option of Lender, (1) Mortgagor shall assume the defense of the action or proceeding with legal counsel satisfactory to Lender, (2) Mortgagor shall assume the defense of the action or proceeding with the participation of Lender, at Mortgagor's expense, or (3) Lender shall assume the defense of the action or proceeding with legal counsel satisfactory to Lender, at Mortgagor's expense; provided that failure of Lender to give such notice shall not relieve Mortgagor from any of Mortgagor's obligations under this Section unless the failure prejudices the defense by Mortgagor of the action or proceeding.

Any amounts payable to Lender under this Section shall be paid by Mortgagor on demand together with interest thereon at the per annum rate equal to the Wall Street Journal's prime rate of interest plus 5% from the date thereof in addition to all other payments to be made by the Mortgagor pursuant to the Note, and shall be subject to and secured by this Mortgage as additional indebtedness under this Mortgage. The obligations of Mortgagor under this Section shall survive any defeasance of this Mortgage. The indemnification provided by this Section to Lender includes officers, employees, agents and representatives of the Lender.

17. In case of any damage to or destruction of the Property or any part thereof, there shall be no abatement or reduction of any payment payable by the Mortgagor under the Note, and Mortgagor shall promptly give written notice thereof to the City generally describing the nature and extent of such damage or destruction.

18. The covenants contained herein shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, successors, assigns and agents of the parties hereto. Whenever used, the singular number shall include the plural, and the use of any gender shall include all genders.

19. Upon payment of all sums secured by this Mortgage, Lender shall discharge this Mortgage, without charge to Mortgagor. Mortgagor shall pay all costs of recordation, if any.

**IN WITNESS WHEREOF, MORTGAGOR** has executed this Mortgage as of the date set forth hereinabove.

(Signatures on following page)

**Mortgagors**

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**Attachment A to Exhibit H**  
**Legal Property Description**

The land referred to herein is situated in the county of Cuyahoga, State of Ohio, and is described as follows:

**Parcel 1**

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio, and known as being Sublot No. 159 in The Pleasant Hill Allotment of part of Original Rockport Township Section No. 20, as shown by the recorded plat in Volume 20 of Maps, Page 9, of Cuyahoga County Records, and being 40 feet front on the Easterly side of Quail Street, and extending back of equal width 115 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Property Address: 2015 Quail Street, Lakewood, OH 44107  
Parcel No. 315-23-157

**Parcel 2**

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio, and known as being Sublot No. 152 in The Pleasant Hill Allotment of part of Original Rockport Township Section No. 20, as shown by the recorded plat in Volume 20 of Maps, Page 9, of Cuyahoga County Records and being 40 feet front on the Westerly side of Robin Street, and extending back between parallel lines 115 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Property Address: 2038 Robin Street, Lakewood, OH 44107  
Parcel No. 315-23-120

**Parcel 3**

Situated in the City of Lakewood, County of Cuyahoga and State of Ohio, and known as being Sublot No. 153 and 154 in The Pleasant Hill Allotment of Part of Original Rockport Township Section No. 20, as shown by the recorded plat in Volume 20 of Maps, Page 9, of Cuyahoga County Records and together forming a parcel of land 75 feet front on the Southerly side of Madison Avenue forming West Madison, and extending back of equal width 125 feet, as appears by said plat, be the same more or less, but subject to all legal highways.

Property Address: 12501 Madison Ave., Lakewood, OH 44107  
Parcel No. 315-23-028 (parcel 315-23-029 contained within)

**Exhibit I**  
**Secured Promissory Note**

**\$150,000**

**Lakewood, Ohio**

**Date:** \_\_\_\_\_

For value received, the undersigned, a Limited Liability Company, **Little Jemmy, LLC, (Maker)**, whose address is 13369 Madison Avenue, Lakewood, Ohio 44107 promises to pay to the order of the City of Lakewood, Ohio (Payee), at its address of 12650 Detroit Avenue, Lakewood, Ohio 44107, the sum of **One Hundred Fifty Thousand Dollars (\$150,000)** at an interest rate of zero percent (0%) per annum.

The principal sum shall be payable on demand upon default. In accordance with the provisions of the attached CDBG Economic Development Fund Loan Agreement of even date, the City shall forgive twenty percent (20.00%) of the original principal sum of **One Hundred Fifty Thousand Dollars (\$150,000)** of the Secured Promissory Note (the "Loan") each consecutive year commencing on **Effective Date + 1 Year** and continuing until the first to occur of: (a) the balance of the Secured Promissory Note (Economic Development Fund Loan) is \$0.00 or (b) the Maker fails to comply with its obligations under this Secured Promissory Note and the Economic Development Fund Loan Agreement of even date.

If any installment of principal, or any part thereof, is not paid within thirty (30) days after its due date, the amount not paid shall bear interest from the date thereof at a rate of five percent (5%) over the annual rate of interest announced on that date by the Wall Street Journal (including its successors in any merger, business reorganization or combination) as its "prime rate" for short term unsecured loans; provided, however, that if at any time the rate of interest provided for herein shall exceed the maximum permitted by law, the rate of interest shall be deemed to be the maximum permitted under applicable law.

Payment shall be made in immediately available funds of lawful money of the United States at the address of Payee set forth above or at such other place, either within or without the State of Ohio, as the holder of this Note may from time to time in writing designate. The principal sum of this Note may be repaid in whole or in part at any time from time to time without premium or penalty. All payments on this Note shall be applied first to accrued and unpaid interest to the date of payment, if any, and then to the principal.

Any notice hereunder shall be in writing and shall be deemed given when delivered by hand or deposited in the U.S. Mail, postage pre-paid, and shall be addressed to the Maker or Payee at the addresses set forth above; provided, however, that if any party shall have designated a different address by notice to the other, then to the last address so designated.

This Note is secured by, among other things, a Security Agreement, dated as of even date herewith, executed by Maker and Payee for the benefit of Payee and covering the security described therein, as well as an Open-End Mortgage Deed dated as of even date herewith. The terms and conditions of said Security Agreements are, by this reference, incorporated herein.

This Note is given to evidence the obligations of Maker relating to Maker's acquisition of real property located at 12501 Madison Avenue, Lakewood, OH 44107. Payee provided proceeds to Maker through Payee's entitlement allocation of federal Community Development Block Grant ("CDBG") dollars. All uses of such CDBG proceeds are subject to federal rules and regulations set by the U.S. Department of Housing and Urban Development. Maker hereby acknowledges its obligations to adhere to and comply with any and all such regulations.

Notwithstanding anything herein to the contrary, the entire unpaid principal balance hereof, shall be due and payable at once upon (i) Maker's failure to comply with its obligations under this Note and the Economic Development Fund Loan Agreement of even date, (ii) any of the events occurring in Article VI – Events of Default – of the Economic Development Fund Loan Agreement of even date, or (iii) upon any material breach or material default of the Maker to comply with any and all applicable rules and regulations set by the U.S. Department of Housing and Urban Development for the use and application of the proceeds evidenced by this Note that were funded through the federal Community Development Block Grant Program.

Maker and all persons or corporations now or at any time liable for the payments of the indebtedness hereby evidenced, for themselves, their heirs, legal representatives, successors and assigns, respectively, hereby expressly waive all applicable exemption rights, valuation, appraisal, presentment, notice of dishonor, protest, notice of non-payment or protest, and demand, and expressly agree that the maturity of this Note may be extended from time to time without in any way affecting the liability of the Maker. If this Note is not paid when due or is collected or attempted to be collected by the initiation or prosecution of any suit or action or through any probate or bankruptcy court, or any other judicial proceeding, or is placed in the hands of any attorney for collection, then Maker shall, if permitted by law, pay reasonable attorneys' fees in addition to any other amounts owing hereunder.

No delay on the part of any holder hereof in exercising any rights hereunder and no waiver of any payment shall operate as a waiver of any power or right on the non-performance or default or non-payment of any of the obligations above mentioned.

This Note may be assigned at any time by Payee, without the consent of Maker.

This Note has been executed and delivered in the State of Ohio, and shall in all respects be interpreted, construed and governed by and in accordance with the internal substantive laws of the State of Ohio. Any actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this Note may be litigated in courts having situs within Cuyahoga County, Ohio and Maker hereby irrevocably consents and submits to the non-exclusive jurisdiction of any local, state or federal court located in such county and irrevocably waives any objection which Maker may now or hereinafter has to the laying of venue or to the jurisdiction of any such court in any such action or proceeding.

(Signatures on following page)

**Little Jemmy, LLC**

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**Exhibit J**  
**Community Development Block Grant (CDBG)**  
**Special Contract Provisions**

**I. Introduction**

This project is financially supported by federal funds allocated by the U.S. Department of Housing & Urban Development (HUD) to the City of Lakewood (City) under the Community Development Block Grant (CDBG) Program. As such, Borrower must adhere to the following regulations, terms, and conditions to the extent they are applicable.

**II. General Conditions**

**A. General Compliance**

Borrower acknowledges this Agreement requires compliance with *Title 24 of the Code of Federal Regulations, Part 570*, the U.S. Housing & Urban Development (HUD) regulations concerning Community Development Block Grants (CDBG) including *Subpart K (Other Program Requirements)* of these regulations. Except that (1) Borrower does not assume the City's environmental responsibilities described in *24 CFR 570.604* and (2) Borrower does not assume the City's responsibility for initiating the review process under the provisions of *24 CFR Part 52 (Intergovernmental Review of HUD Programs & Activities)*.

Borrower also agrees to comply with various provisions of *Title 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)* and all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under this contract. Further, Borrower agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

**B. Independent Contractor**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. Borrower shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. Borrower shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance, as Borrower is an independent contractor.

**C. Hold Harmless**

Borrower shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Borrower's performance or nonperformance of the services or subject matter called for in this Agreement.

**D. Workers' Compensation**

Borrower shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement and shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage and shall comply with the bonding and insurance requirements of *24 CFR 84.31* and *84.48 (Bonding and Insurance)*.

**E. Insurance & Bonding**

Borrower shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Borrower shall comply with the bonding and insurance requirements of *24 CFR 84.31* and *84.48, Bonding and Insurance*.



**F. Grantee Recognition**

Borrower shall ensure recognition of the roles of both the Borrower and the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Borrower will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**G. Amendments**

This Agreement may be amended at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and signed by a duly authorized representative of each organization. Any amendments shall not invalidate this Agreement nor relieve or release Borrower from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with federal, state, and/or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by a written amendment signed by both parties.

**H. Suspension or Termination**

In accordance with 2 CFR 200.339 (*Termination*), the City of Lakewood may suspend or terminate this Agreement if Borrower materially fails to comply with any terms of this Agreement, which include, but are not limited to, the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of Borrower to fulfill in a timely and proper manner their obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement, or;
4. Submission by the Borrower to the City reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR Appendix II to Part 200 (*Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*), this Agreement may also be terminated for convenience by either the City of Lakewood or the Borrower, in whole or in part, by setting forth the reasons for such termination, the effective date and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines the remaining portion of the award will not accomplish the purpose for which the award was made; the City may terminate the award in its entirety.

**III. Administrative Requirements**

**A. Financial Management**

**1. Accounting Standards**

Borrower agrees to comply with 2 CFR 200.302 (*Financial Management*) and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

**2. Cost Principles**

Borrower shall administer its program in conformance with 2 CFR 200 Subpart E (*Cost Principles*). These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

**3. Cost Documentation**

All costs associated with this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

**B. Documentation & Record Keeping**

**1. Records to be Maintained**

Borrower shall maintain all records required by the federal regulations specified in 2 *CFR* 200.333 (*Retention Requirements for Records*) and 24 *CFR* 570.506 (*Records to be Maintained*) pertinent to the activities funded under this Agreement including financial records as required by 24 *CFR* 570.502 (*Applicability of Uniform Administrative Requirements*) and 24 *CFR* 84.21-28 (*Standards for Financial Management Systems*), and other records necessary to document compliance with *Subpart K of 24 CFR Part 570*.

**2. Record Retention**

Borrower shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the submission date of the City's Consolidated Annual Performance & Evaluation Report (CAPER) in which the activities assisted under the Agreement are reported for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

**3. Client Data**

Borrower shall maintain data demonstrating client eligibility for services provided, if applicable. Such data shall include, but not be limited to, client name, address, income level, or other basis for determining eligibility, and description of service(s) provided. Such information shall be made available to City monitors or their designees for review upon request.

**4. Disclosure**

Borrower understands client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

**5. Close-Outs**

Borrower's obligation to the City of Lakewood shall not end until all close-out requirements are completed per this contract. Activities during this close-out period shall include, but are not limited to, making final payments, disposing of program assets, including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Borrower, and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Borrower has control over CDBG funds, including program income.

**6. Audits & Inspection of Records**

All records with respect to any matters covered by this Agreement shall be made available to the City, HUD, and/or the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Borrower within 30 days after receipt. Failure of the Borrower to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments and/or refunding monies due. Borrower hereby agree to have an annual agency audit conducted in accordance with current City audit policies and *OMB Circular A-133*.

## **C. Reporting & Payment Procedures**

### **1. Program Income**

Borrower shall report all program income, as defined at 24 CFR 570.500 (*Definitions*) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Borrower shall comply with the requirements set forth at 24 CFR 570.504 (*Program Income*). By way of further limitations, the Borrower may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Borrower at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

### **2. Indirect Costs**

If indirect costs are charged, the Borrower will develop an indirect cost allocation plan for determining the appropriate share of administrative costs and may be required to submit such plan to the City for approval.

### **3. Payment Procedures**

The City will pay to the Borrower funds available under this Agreement based upon information submitted by the Borrower, and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Borrower, not to exceed actual cash requirements. Payments will be adjusted by the Borrower in accordance with advanced funds and program income balances available in Borrower accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the Borrower on behalf of the City.

### **4. Progress Reports**

Borrower shall submit regular Progress Reports to the City of Lakewood in the form, content, and frequency required by the City.

## **D. Procurement**

### **1. Compliance**

Borrower shall comply with current City policies concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

### **2. OMB Standards**

Unless specified otherwise within this agreement, the Borrower shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 84 (*Uniform Administrative Requirements for Grants and Agreements*).

### **3. Travel**

The Borrower shall obtain written approval from the City of Lakewood for any travel outside the metropolitan area with funds provided under this Agreement.

### **4. Use of Debarred, Suspended or Ineligible Contractors**

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any entity during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24 (*Government Debarment & Suspension Regulations*).

#### **E. Use & Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 *CFR Part 84* and 24 *CFR 570.502 (Applicability of Uniform Administrative Requirements)*, 570.503 (*Agreements with Subrecipients*), and 570.504 as applicable, which include but are not limited to the following:

1. Borrower shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination;
  - a. Real property under Borrower's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 *CFR 570.208 (Criteria for National Objectives)* until five (5) years after expiration of this Agreement. If the Borrower fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Borrower shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Borrower. The Borrower may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
2. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income, prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment. Equipment not needed by the Borrower for activities under this Agreement shall be (a) transferred to the City or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

#### **IV. Personnel & Participant Conditions**

##### **A. Civil Rights**

##### **1. Compliance**

Borrower agrees to comply with City of Lakewood and State of Ohio civil rights laws and ordinances and with *Title VI of the Civil Rights Act of 1964* as amended, *Title VIII of the Civil Rights Act of 1968* as amended, *Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974* as amended, *Section 504 of the Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, the *Age Discrimination Act of 1975*, *Executive Order 11063 (Equal Opportunity in Housing)*, and *Executive Order 11246 (Equal Employment Opportunity)* as amended by *Executive Orders 11375, 11478, 12107 and 12086*.

##### **2. Non-Discrimination**

Borrower agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations and executive orders referenced in 24 *CFR 570.607 (Employment & Contracting Opportunities)* as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

### **3. Land Covenants**

This contract is subject to the requirements of *Title VI of the Civil Rights Act of 1964 (P. L. 88-352)* and *24 CFR 570.601 and 570.602 (Affirmatively Furthering Fair Housing)*. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Borrower shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Borrower, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

### **4. Section 504**

Borrower agrees to comply with all federal regulations issued pursuant to compliance with *Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)* which prohibits discrimination against the individuals with disabilities or handicaps in any federally-assisted program. The City shall provide the Borrower with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

## **B. Affirmative Action**

### **1. Approved Plan**

Borrower may be required to commit to and carry out pursuant to City specifications an Affirmative Action Program in keeping with the principles as provided in Presidential Executive Order 11246 enacted September 24, 1966. If so, the City shall provide Affirmative Action guidelines to the Borrower to assist in the formulation of such program.

### **2. Women- & Minority-Owned Businesses (W/MBE)**

Borrower will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in *Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632)*, and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

### **3. Access to Records**

Borrower shall furnish and cause each of its tenant businesses to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City of Lakewood, HUD, or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

### **4. Notifications**

Borrower will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Borrower's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**5. Equal Employment Opportunity & Affirmative Action (EEO/AA) Statement**

Borrower will in all solicitations or advertisements for employees state it is an Equal Opportunity or Affirmative Action employer.

**6. Subcontract Provisions**

Borrower will include this Agreement's Civil Rights and Affirmative Action provisions in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subcontractors.

**C. Employment Restrictions**

**1. Prohibited Activity**

Borrower is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

**2. Labor Standards**

If applicable, Borrower and its Subcontractors agree to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (*40 U.S.C. 327 et seq.*) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

If applicable, Borrower and its Subcontractors agree to comply with the Copeland Anti-Kick Back Act (*18 U.S.C. 874 et seq.*) and its implementing regulations of the U.S. Department of Labor at *29 CFR Part 5 (Labor Standards Provisions)*. The Borrower and its Subcontractors shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City of Lakewood for review upon request.

If applicable, Borrower and its Subcontractors agree that except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the Borrower pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under *29 CFR Parts 1, 3, 5 & 7 (Procedures for Predetermination of Wage Rates)* governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Borrower and its Subcontractors of its obligation, if any, to require payment of the higher wage. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

**3. Section 3 Clause**

**a. Compliance**

If applicable, compliance with the provisions of *Section 3 of the HUD Act of 1968*, as amended, and as implemented by the regulations set forth in *24 CFR 135 (Section 3 Regulations)*, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the Borrower and its Subcontractors. Failure to fulfill these requirements shall subject the Borrower and its Subcontractors, their successors, and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Borrower certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Borrower further agrees to comply with these Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

*"The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."*

Borrower further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, including reduction and abatement of lead- based paint hazards, housing construction, or other public construction projects are given to low- and very low-income persons residing within the metropolitan area in which the CDBG- funded project is located.

Where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. Further, priority should be given to awarding contracts for work undertaken in connection with this Agreement to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area and within the service area or the neighborhood in which the CDBG-funded project is located.

Borrower certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

**b. Notifications**

Borrower agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**c. Subcontracts**

Borrower will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Borrower will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under *24 CFR Part 135* and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

**1. Assignability**

Borrower shall neither assign nor transfer any interest in this Agreement without the prior written consent of the City of Lakewood thereto; provided, however, that claims for money due or to become due to the Borrower from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City of Lakewood.

## **2. Subcontracts**

### **a. Monitoring**

Borrower will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

### **b. Content**

Borrower shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

### **c. Selection Process**

Borrower shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City of Lakewood along with documentation concerning the selection process.

## **3. Hatch Act**

Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of *Chapter 15 of Title V of the U.S.C (Political Activity of Certain State & Local Employees)*.

## **4. Conflict of Interest**

Borrower agrees to abide by the provisions of 24 CFR 84.42 (*Codes of Conduct*) and 570.611 (*Conflict of Interest*), which include, but are not limited to, the following:

- a. Borrower shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
- b. No employee, officer or agent of the Borrower shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted reporting, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Borrower, the Subcontractor, or any designated public agency.



## **5. Lobbying**

Borrower hereby certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and;
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subgrantees shall certify and disclose accordingly;
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S.C.* Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **6. Copyright**

If this contract results in any copyrightable material or inventions, the City of Lakewood reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

## **7. Religious Activities**

Borrower agrees funds provided under this Agreement will not be utilized for inherently religious activities prohibited by *24 CFR 570.200 (General Policies)*, such as worship, religious instruction, or proselytization.

## **V. Environmental Conditions**

### **A. Air and Water**

Borrower agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, *42 U.S.C. , 7401, et seq.*;
2. Federal Water Pollution Control Act, as amended, *33 U.S.C., 1251, et seq., as amended, 1318* relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said *Section 114 and Section 308*, and all regulations and guidelines issued thereunder;
3. Environmental Protection Agency (EPA) regulations pursuant to *40 CFR Part 50 (National Primary & Secondary Ambient Air Quality Standards)*, as amended.

### **B. Flood Disaster Protection**

In accordance with the requirements of the *Flood Disaster Protection Act of 1973 (42 U.S.C. 4001)*, the Borrower shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes, including rehabilitation.

**C. Lead-Based Paint**

Borrower agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B (*Lead-Based Paint Poisoning Prevention in Certain Residential Structures*). Such regulations pertain to all CDBG- assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead- based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

**D. Historic Preservation**

Borrower agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (*16 U.S.C. 470*) and the procedures set forth in 36 CFR Part 800 (*Advisory Council on Historic Preservation Procedures for Protection of Historic Properties*), insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

**VI. Severability**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**VII. Section Headings & Subheadings**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**VIII. Waiver**

The City of Lakewood's failure to act with respect to a breach by the Borrower does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**IX. Entire Agreement**

This Agreement constitutes a part of the entire Agreement between the City of Lakewood and the Borrower for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City of Lakewood and the Borrower with respect to this Agreement.